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ON INQUESTS

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OP-ED

Prof. Ian Freckelton AO KC

Changing Society: One Domestic Violence Inquest at a Time

Winning cases is good. It means the world to a client facing jail and it can make a profound difference to quality of life in personal injury and commercial matters. It is self-affirming for a King's Counsel too.

However, being part of cases which make a real social difference and have the potential to ease suffering and provide protection to the vulnerable, when otherwise such protection as exists is minimal and unsatisfactory, generates a real sense of satisfaction that the legal system is contributing constructively and in an ongoing way to the community. It transcends outcomes in individual cases.

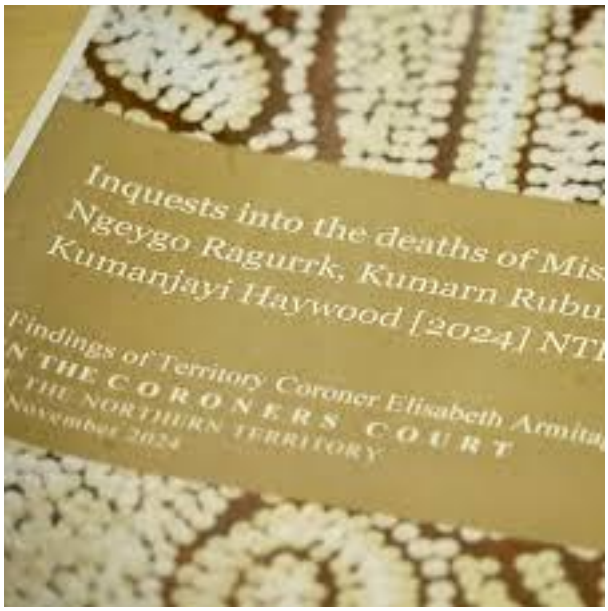
In all countries domestic violence is a scourge, and it is a phenomenon that affects all parts of the community. It is generally the exercise of power by men over their domestic partners for gratification, perceived wrongs, manipulation or the benefits, direct and indirect, of control of another. Response by the State to complaints (generally) made by women that they have been threatened, beaten or otherwise maltreated is vital but all too often it is ineffectual and even counter-productive. If police attendance is slow, unsympathetic or disbelieving, victim/survivors can be discouraged from taking advantage of opportunities for protection from their assailant and from making a subsequent plea for assistance.

and is often experienced as futile by police. It is a major cause of burn-out and disillusionment. In the Northern Territory of Australia general duties police spend up to 80 percent of their time responding to domestic violence calls, the overwhelming majority of them involving the 40 percent Indigenous population. They arrest perpetrators, they separate couples, they transport women, where possible, to domestic violence shelters, they deal with intoxicated and substance-affected family members, and they are often physically and verbally assailed when they attend the site to which they have been despatched. The complainant is commonly under pressure from the male and their family who encourage them to say that the call the complainant made to emergency services was a mistake and she is not prepared to make a statement, does not want an intervention order, does not wish charges to be brought, and does not require medical or other assistance. Women often call police on large numbers of occasions prior to the final catastrophic actions taking place.

All too often telephone calls to police are a precursor to, or even a contributor to, homicidal violence engaged by the woman's domestic partner, and the woman's death by blunt instrument assault, drowning, stabbing, being driven over or being set on fire. The Northern Territory of Australia has a rate of domestic violence homicide that is approximately nine times the Australian national average; there the violence is more common, worse and more often results in death. Almost invariably the final conduct occurs in the context of alcohol consumption by both the victim and the offender.

The Northern Territory, like all other parts of Australia, holds coronial inquests into sudden, unexpected , unnatural or violent deaths. Latterly, there have been multiple inquests into Indigenous domestic violence deaths. The author has been senior counsel for the Northern Territory Police during a series of these inquests. The coronial investigations in open court have consumed months of court time, and involved expert reports from multiple sectors relevant to the phenomenon of domestic violence. Hard questions have been asked in the glare of national publicity, embarrassed concessions by entities of State have been made and commitments given to do more and better. Many tears have been publicly shed by the coroner, counsel, solicitors, witnesses, journalists covering the proceedings and bereaved family members.;

At the end of 2024 the Territory Coroner, Elizabeth Armitage, published her findings and recommendations into a series of four such deaths: a 747 paragraph coronial report (https://agd.nt.gov.au/media/docs/inquest-finding-pubications/2024/74c7ad06daceae11bd2c0534cdc274fe6e61b06e.pdf):


Inquests into the deaths of Mis
Findings of Territory Coroner Elisabeth Armita
IN THE CORONERS COURT
THE NORTHERN TERRITORY

The Coroner proposed thoroughgoing reform to primary and secondary responses to communications by women that they have been the victims or are under threat of violence from their partners. She urged consolidation of work to reduce racism in responses by police who generally in the Northern Territory are white, greater education of police about the phenomenology of domestic violence, including coercive control, and a major increase in funding for programmes to assist victim/survivors, as well as to intervene earlier and more effectively with perpetrators before they commit lethal acts of violence.

The inquests have been held in a collaborative spirit with realistic concessions being made by all arms of the State and a genuine effort being made, together, to find ways to construct a better system of response. This is an unusual litigation strategy by government departments and police alike, which are often thin-skinned about criticism and focused upon self-exculpation, too often attributing blame and responsibility for deficiencies to others. Instead, to their credit both the government departments and the Northern Territory Police Force have assisted the Territory Coroner to refine recommendations for systemic change in an effort to reduce the proliferation of Indigenous deaths from domestic violence. A key part of this has been the development of a co-responder model under which police will function as the first response to a call-out in order to provide protection to victims of violence, prefer charges as appropriate and take other immediate action that is required. An aspect of the first response is now a requirement that all police responding to such incidents complete a straightforward evaluation of risk which provides necessary information for next steps that need to be undertaken. The drafting of the

instrument was modelled on other such documentation, adjusted for local conditions, and finessed with input from expert domestic violence experts, medical practitioners, criminologists and workers in women's shelters, as well as police and bureaucrats.

The distinctive feature of the Northern Territory co-responder model, though, is the second response. This is the follow-up, in which, preferably within 72 hours of the incident that prompted the first response, a domestic violence worker, accompanied by a police officer, makes contact with both the woman and the alleged user of violence and starts to work through with them options that exist for better conduct and greater safety. The focus is on intervention, which may include a police or court order to protect the woman, with conditions for no violence, no intoxication, or even no contact. Importantly, women are given the opportunity for counselling and health assistance to meet their needs, and those of their children, if they exist, in relation to safety and issues in their relationship. A similar intervention takes place with the male. It focuses on issues in relation to substance use, cultural values, generational trauma, depression, anxiety and the use of violence within the family. Options for participation in men's programmes, including in relation to anger management, substance dependence and trauma are raised, and active encouragement is given to the alleged user of violence to enter the programmes. The attempt is to intervene therapeutically and with as little use of the criminal law as possible.

As a result of the inquest processes a pilot co-responder programme was initiated in Alice Springs in central Australia in 2024 and in the later parts of 2025 it is being extended to Darwin, the capital of the Northern Territory, and various other locations. The co-responder initiative is directly attributable to the recommendations made by the Territory Coroner, the pressures exerted by publicity consequent upon the evidence heard during the inquests, and the preparedness of key stakeholders, including police and government departments, to support an attempt to deal with what is recognised to be the escalating problem of domestic violence in the Northern Territory. The initiatives are experimental and resource-consuming in that they requires novel and additional work to be done with as yet only modest increases to budgets. The co-responder model is being rolled out for Indigenous and non-Indigenous incidents of domestic violence and it is being fashioned to be trauma-informed and culturally-aware, with involvement and input from Aboriginal elders, police and government workers. Accordingly, it is likely in due course to require a major financial and personnel commitment by government. As a senior counsel, it has been a remarkable and gratifying experience to have been a small part of the change process. Whether it will achieve its objectives and whether it will command sufficient political commitment to be sufficiently financially and logistically supported in the longer term remain to be seen. It will need to be independently evaluated. However, the implementation of the recommendations of the Northern Territory Coroner has the potential to be an international blueprint for providing a protection against domestic violence that so far has been inadequate in many countries. It is proving a rare litigation-generated source of hope in an otherwise bleak and dangerous social context.

Dr Freckelton in his LLD robes with his sheepadoodles, Otis and Penny.

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